

NONGOMA LOCAL MUNICIPALITY

KZN265



CREDIT CONTROL POLICY

FINANCIAL YEAR: 2020-2021

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ANNEXURE: LEGAL REQUIREMENTS

PART 1 OBJECTIVE: CONSTITUTIONAL OBLIGATIONS

The council of the municipality, in adopting this policy on credit control and debt collection, recognises its constitutional obligations to develop the local economy and to provide acceptable services to its residents. It simultaneously acknowledges that it cannot fulfill these constitutional obligations unless it exacts payment for the services which it provides and for the taxes which it legitimately levies in full from those residents who can afford to pay, and in accordance with its indigency relief measures for those who have registered as indigents in terms of the council's approved indigency management policy.

PART 2 EXPECTED FUTURE PAYMENT LEVELS

2.1 In terms of the budgets approved by the council, and in accordance with commonly accepted best practice, this municipality will have to strive to ensure that payment levels for the present and future financial years, in respect of all amounts legitimately owing to the municipality (that is, inclusive of the balance of the monthly accounts payable by registered indigents) are maintained at an annual average of at least 90%.

2.2 It is generally accepted by this council that payment levels averaging below 95% per month are untenable. Even with payment levels of 60% , the council will annually have to provide on its expenses budget a contribution to bad debts of 40% of the aggregate revenues legitimately owing to this municipality – a contribution that is made at the direct cost of improved service delivery and developmental projects.

2.3 In order to deal with the problem of non-payment by residents who can afford their monthly commitments, the municipality intends to introduce a twofold approach: to promulgate credit control and debt collection by-laws which deal

stringently with defaulters, , and, by using the formal political structures of the municipality and in the administration's general dealings with the public, to make the community aware of its legal obligations towards the municipality, and to emphasise the negative consequences for all if non-payment continues. The municipality's ward committees are particularly charged with this responsibility.

Within 7 (seven) calendar days after each monthly due date for payment of municipal accounts for property rates and/or service charges, the municipal manager shall dispatch to every defaulting accountholder, that is, every accountholder who as at the date of the notice has not paid the monthly account in full or has not made an acceptable arrangement with the municipal manager for partial or late payment, a notice stating that unless full payment is received or an acceptable arrangement made with the municipal manager for partial or late payment, the relevant supply or service to the property to which the account in arrears relates shall be terminated or restricted 14 (fourteen) calendar days after the date of the notice concerned., and that proceedings for the recovery of any amount payable may be commenced after such period.

PART 4 RECONNECTION OR REINSTATEMENT OF TERMINATED OR RESTRICTED SERVICES

Services to defaulting accountholders terminated or restricted in terms of part 3 above shall be reconnected or reinstated by the municipal manager only when all the following conditions have been met:

- the arrear account has been paid in full, including the interest raised on such account; or an acceptable arrangement has been made with the municipal manager for the payment of the arrear account, including the interest raised on such account;

- the charge(s) for the notice sent in terms of part 3 and for the reconnection or reinstatement of the terminated or restricted service(s), as determined by the council from time to time, have been paid in full.

PART 5 PERIODS FOR REINSTATEMENTS

The municipal manager shall reconnect or reinstate terminated or restricted services within 3 (three) working days after the date on which the conditions set out in part 4 have been met, unless the municipal manager is unable to do so because of circumstances beyond the control of the municipality. In the latter event the municipal manager shall promptly inform the mayor of such circumstances and of any actions required to overcome the circumstances concerned.

PART 6 RESTRICTION OF SERVICES

If the municipal manager is of the opinion that the termination of services, in the case of a particular property in respect of which the account is in arrear, is not in the best interests of the community (for example, because of the potential endangerment of the life of any person, whether resident in or outside the property concerned), the municipal manager may appropriately restrict rather than terminate the services in question.

PART 7 INSTITUTION OF LEGAL PROCEEDINGS

If an accountholder has not paid arrears owing to the municipality, including the interest raised on such account, or made an acceptable arrangement with the municipal manager for the payment of the arrear account, including the interest raised on such account, within a period of 28 (twenty eight) calendar days after the date of the notice referred to in part 3, the municipal manager shall, forthwith hand such account over for collection and such further action as is deemed necessary to the municipality's attorneys or any debt

collecting agency appointed by the council, unless the cost of such collection and the prospects of recovery in relation to the amount of the arrears concerned would render such action non-cost-effective. Such further action shall include if necessary the sale in execution of such property to recover arrear property rates and service charges (if the accountholder is also the owner of the property). All legal expenses incurred by the municipality shall be for the account of the defaulting accountholder.

PART 8 ARRANGEMENTS FOR PAYMENT OF ARREAR ACCOUNTS

8.1 Allowing defaulting accountholders to make arrangements for the payment of arrear accounts shall be at the discretion of the municipal manager.

8.2 Each defaulting accountholder shall be allowed a maximum period of 3 (three) months within which to pay an arrear account, together with the interest raised on such account, and it shall be a condition for the conclusion of any arrangement that the accountholder is bound to pay every current municipal account in full and on time during the period over which such arrangement extends.

8.3 If an accountholder breaches any material term of an arrangement, the balance of the arrear account, together with the balance of interest raised on such account, shall immediately become due and payable to the municipality, and if the accountholder defaults on such payment, the municipal manager shall terminate or restrict services to the property in question and shall forthwith hand such account over for collection as envisaged in part 7.

8.4 An accountholder who has breached an arrangement as set out above shall not be allowed to make any further arrangements for the payment of arrear accounts, but shall be proceeded against, after the dispatch of the initial notice of default as envisaged in part 3 and failure by the accountholder to pay the arrear account,

together with interest raised on such arrears as required in terms of such notice, as though such accountholder had breached a material term of an arrangement.

PART 9 ALLOCATION OF PART-PAYMENTS AND APPROPRIATION OF DEPOSITS

9.1 If an accountholder pays only part of any municipal account due, the municipal manager shall allocate such payment as follows:

- firstly, to any unpaid charges levied by the municipality in respect of unacceptable cheques, notices, legal expenses and reconnections or reinstatements of services in respect of the account or property concerned;
- secondly, to any unpaid interest raised on the account;
- fourthly, to any unpaid refuse collection charges;
- fifthly, to any unpaid property rates;

9.2 This sequence of allocation shall be followed notwithstanding any instructions to the contrary given by the accountholder.

PART 10 QUERIES BY ACCOUNTHOLDERS

In the event of an accountholder reasonably querying any item or items on the monthly municipal account, no action shall be taken against the accountholder as contemplated in part 3 provided the accountholder has paid by due date an amount equal to the monthly average monetary value of the three most recent un-queried accounts in respect of the service under query, as well as all un-queried balances on such account, and provided further such query is made in writing by the accountholder or is recorded in writing by the municipal manager on behalf of the accountholder on or before the due date for the payment of the relevant account.

PART 11 DISHONoured AND OTHER UNACCEPTABLE CHEQUES

If an accountholder tenders a cheque which is subsequently dishonoured by or is found to be unacceptable to the accountholder's bankers, the municipal manager shall – in addition to taking the steps contemplated in this policy against defaulting accountholders – charge such accountholder the penalty charge for unacceptable cheques, as determined by the council from time to time, and such charge shall rank equally with the costs and expenses incurred by the municipality for purposes of determining the sequence of allocations and appropriations contemplated in part 9.

PART 12 DELEGATION OF RESPONSIBILITIES BY MUNICIPAL MANAGER

The municipal manager, including any person acting in such capacity, shall be responsible to the council for the implementation of this policy and its attendant by-laws but – without in so doing being divested of such responsibility – may delegate in writing all or any of the duties and responsibilities referred to in these by-laws to any other official or officials of the municipality, and may from time to time in writing amend or withdraw such delegation(s).

PART 13 ROLE OF MUNICIPAL MANAGER

13.1 Section 100 of the Municipal Systems Act 2000 assigns the legal responsibility for implementing the credit control and debt collection policies and by-laws to the municipal manager.

13.2 In practice, however, the municipal manager will inevitably delegate some or many of the responsibilities specifically assigned to this office in the by-laws, as it will be administratively impossible for the municipal manager to perform the numerous other functions of this office as well as attend to frequently recurring administrative responsibilities. However, such delegation does not absolve the municipal manager

from final accountability in this regard, and the municipal manager will therefore have to ensure that a proper internal reporting structure is established and consistently implemented so that the day-to-day actions of and results from the credit control and debt collection programme are properly monitored and supervised.

13.3 It is also an integral feature of the present policy that the municipal manager shall report monthly to the executive mayor or the executive committee, as the case may be, and quarterly to the council on the actions taken in terms of the by-laws, and on the payment levels for the periods concerned. Such reports shall, as soon as practicably possible, provide the required information both in aggregate and by municipal ward.

13.4 In addition, such monthly report shall indicate any administrative shortcomings, the measures taken or recommended to address such shortcomings, and any actions by councillors which could reasonably be interpreted as constituting interference in the application of the by-laws.

13.5 Notwithstanding all the foregoing references to the accountability of the municipal manager in regard to these by-laws, it is incumbent on all the officials of the municipality, certainly all those who are at management level, as well as more junior officials who are directly or indirectly involved with the community and the municipality's general customer relations, to promote and support both this credit control and debt collection policy and the application of the attendant by-laws. The responsibilities of all officials include reporting to the municipal manager any evident breaches of these by-laws, whether by members of the community, other officials or councillors of the municipality.

PART 14 ROLE OF COUNCILLORS

14.1 Section 99 of the Systems Act 2000 places the important legal responsibility on the executive mayor or executive committee, as the case may be, of monitoring and supervising the application of the present policy and the attendant by-laws, and of reporting to the council on the extent and success of credit control actions.

14.2 The present policy further recommends that the municipality's ward committees be actively involved in implementing the credit control and debt collection programme, and should therefore receive monthly reports on the status of the municipal manager's credit control actions. The ward committees must also actively promote the present policy, and ensure at the same time that the municipality's customer relations are of a standard acceptable to the community.

14.3 In order to maintain the credibility of the municipality in the implementation of the present policy and the attendant by-laws, it is essential that councillors should lead by example. Councillors, by adopting this policy, therefore pledge, not only their unqualified support for the policy, but their commitment to ensuring that their own accounts will at no stage fall into arrears.

PART 15 INTEREST ON ARREARS AND OTHER PENALTY CHARGES

15.1 Interest shall be charged on all property rates accounts .

15.3 Interest shall be calculated on a monthly basis at a rate of 1.5% monthly and that will be 18% annually.

PART 16 INDIGENCY MANAGEMENT

In regard to the payments expected from registered indigents, and the credit control and debt collection actions contemplated in respect of such residents, this policy must be read

in conjunction with the municipality's approved policy on indigent household management.

PART 17 UNCOLLECTABLE ARREARS

17.1 The effective implementation of the present policy also implies a realistic review of the municipality's debtor's book at the conclusion of each financial year. The municipal manager shall as soon as possible each year present to the council a report indicating the amount of the arrears which it is believed is uncollectable, together with the reasons for this conclusion.

17.2 The council shall then approve the write off of such arrears, if it is satisfied with the reasons provided.

PART 18 PROVISION FOR DOUBTFUL DEBTS

ADMINISTRATION

The administration shall be done by the Chief Financial Officer or his delegates

ADMINISTRATION PROCEDURE

Annual provision for bad debt shall be provided for as follows:

- (a) 0% of all outstanding consumers with amount owing not older than 60 days and government
- (b) 50 % of all outstanding debts 90+ days and older based on the estimated age analysis of the financial year end of which the financial statements are drawn up for, and
- (c) 20% for + 60 days based on the estimated age analysis of the financial year end of which the financial statements are drawn up for.
- (d) Traffic fines shall be written off at 50% of the total debt.

Provision for bad debt shall be provided for the following services:

- (a) Rates
- (b) Refuse
- (c) Sundry Debtors
- (d) Traffic Fines

Debtors will be analysed in terms of concentrations of individual risk classes showing each individual ageing. National and provincial government will therefore be excluded as not high risk.

RECORDS AND REPORTS

The Chief Financial Officer or the delegated official must keep all provision transactions in accordance with General Recognized Accounting Practices.

The Chief Financial Officer or the delegated official must report to the Accounting Officer / Municipal Manager the provisions portfolio in a prescribed form as required by the Municipal Regulation and must review and adjust the provisions with the adjustment budget

PART 19 ARREARS WHICH HAVE ARISEN PRIOR TO THE ADOPTION OF THE PRESENT POLICY

The council shall separately consider arrears which arose prior to the adoption of the present policy, and shall advise accountholders of their respective obligations in regard to such arrears. In determining such obligations, the council shall have regard to the quantum of such arrears, to the period over which the default occurred, and to whether the accountholder concerned has registered as an indigent in terms of the municipality's policy on indigency management. The council shall further consider an incentive scheme which will appropriately encourage accountholders to settle all or a stated percentage of these arrears.

PART 20 ANNEXURE: LEGAL REQUIREMENTS

19.1 It is essential for the protection of the municipality's interests that the provisions of particularly the Municipal Systems Act 2000 and the Property Rates Act 2004, in so far as they provide additional debt collection mechanisms for municipalities, be diligently enforced. At the same time, both the council and the administration must note the obligations, which the municipality has towards the community in respect of customer care and relations.

19.2 For ease of reference a summary of the relevant extracts from the Municipal Systems Act, specifically Sections 95 to 103 and Section 118, are therefore appended to this policy, as are Sections 28 and 29 of the Property Rates Act. The immediately relevant extracts from the Water Services Act 1997 and the Municipal Finance Management Act are also included in the annexure.

ANNEXURE

I: LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000

SECTION 95: CUSTOMER CARE AND MANAGEMENT

A municipality must, in relation to the levying of rates and other taxes, and the charging of fees for municipal services, within its financial and administrative capacity, do the following:

establish a sound customer management system which aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality itself or (where applicable) a service provider;

establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider with regard to the quality of the services and the performance of the service provider;

take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which moneys raised from the service are utilised;

where the consumption of services is measured, take reasonable steps to ensure that the consumption by individual consumers of services is measured through accurate and verifiable metering services;

ensure that persons liable for payments receive regular and accurate accounts which indicate the basis for calculating the amounts due;

provide accessible mechanisms for those persons to query or verify accounts and metered consumption, as well as appeal procedures which allow such persons to receive prompt redress for inaccurate accounts;

provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;

provide mechanisms to monitor the response time and efficiency in complying with the aforementioned requirements; and

provide accessible pay points and other mechanisms for settling accounts or for making prepayments for services.

SECTION 96: DEBT COLLECTION RESPONSIBILITY OF MUNICIPALITIES

A municipality must collect all moneys that are due and payable to it, subject to the requirements of the present Act and any other applicable legislation. For this purpose, the municipality must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and which complies with the provisions of the present Act.

SECTION 97: CONTENTS OF POLICY

The municipality's credit control and debt collection policy must provide for all of the following:

- credit control procedures and mechanisms;
- debt collection procedures and mechanisms;
- provision for indigent debtors in a manner consistent with its rates and tariff policies and any national policy on indigents;
- realistic targets consistent with generally recognised accounting practices and collection ratios, and the estimates of income set in the budget less an acceptable provision for bad debts;
- interest on arrears (where appropriate);
- extensions of time for payment of accounts;
- termination of services or the restriction of the provision of services when payments are in arrears;
- matters relating to unauthorised consumption of services, theft and damages; and
- any other matters that may be prescribed by regulation in terms of the present Act.

The municipality, within its discretionary powers, may differentiate in its credit control and debt collection policy between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

SECTION 98: BY-LAWS TO GIVE EFFECT TO POLICY

The council of the municipality must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

Such by-laws may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters, and, if so, must ensure that such differentiation does not amount to unfair discrimination.

SECTION 99: SUPERVISORY AUTHORITY

A municipality's executive mayor or executive committee, as the case may be, or – if the municipality does not have an executive committee or executive mayor – the council of the municipality itself, or a committee appointed by the council as the supervisory authority, must do all of the following:

oversee and monitor the implementation and enforcement of the municipality's credit control and debt collection policies and any by-laws enacted in terms of the foregoing requirements, and the performance of the municipal manager in implementing the policies and by-laws;

where necessary, evaluate or review the policies and by-laws, and the implementation of such policies and by-laws, in order to improve the efficiency of its credit control and debt collection mechanisms, processes and procedures; and

at such intervals as may be determined by the council, report to a meeting of the council, except when the council itself performs the duties of the supervisory authority.

SECTION 100: IMPLEMENTING AUTHORITY

The municipal manager, or – where applicable – the service provider must:

implement and enforce the municipality's credit control and debt collection policies and by-laws enacted in terms of the foregoing requirements;

in accordance with the credit control and debt policies and any by-laws, establish effective administrative mechanisms, processes and procedures to collect moneys due and payable to the municipality; and

at such intervals as may be determined by the council, report the prescribed particulars to a meeting of the supervisory authority referred to previously.

SECTION 101: MUNICIPALITY'S RIGHT OF ACCESS TO PREMISES

The occupier of premises in a municipality must give an authorised representative of the municipality or of a service provider access at all reasonable times to the premises in order to read, inspect, install or repair any meter or service connexion for reticulation, or to disconnect, stop or restrict the provision of any service.

SECTION 102: ACCOUNTS

Except where there is a dispute between the municipality and the person from whom the municipality has claimed any specific amount, a municipality may:

consolidate any separate account of such person;

credit a payment by such person against any account of that person; and

implement any of the debt collection and credit control measures provided for in the present Act in relation to any arrears on any of the accounts of such person.

SECTION 103: AGREEMENTS WITH EMPLOYEES

A municipality may, within its discretionary powers, but with the consent of any person liable to the municipality for the payment of rates or other taxes or fees for municipal services, enter into an agreement with such person's employer to deduct from the salary or wages of such person any outstanding amounts due by such person to the municipality or such regular monthly amounts as may be agreed to.

The municipality may further, within its discretionary powers, provide special incentives for employers to enter into such agreements and for employees to consent to such agreements.

SECTION 118: RESTRAINT ON TRANSFER OF PROPERTY

The registrar of deeds or any other registration officer of immovable property may not register the transfer of any property other than on the production to such registration officer of a prescribed certificate issued by the municipality in which such property is situated, and which certificate certifies that all amounts due in connexion with such property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

A municipality may recover, as far as is practicable, all amounts due to it for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties, in preference to any mortgage bonds registered against any property which is to be transferred.

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

New code has been adopted

CODE OF CONDUCT FOR COUNCILLORS

Section 6A of this code requires councillors to pay all rates, tariffs, rents and other moneys due to the municipality promptly and diligently.

The municipal manager is further required to notify the speaker of the council and the MEC for Local Government, in writing, whenever a councillor has been in arrears with any of these payments for a period exceeding 30 days.

II: LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003

SECTION 64: REVENUE MANAGEMENT

The accounting officer of the municipality is responsible for the management of the municipality's revenues, and must, for this purpose, take all reasonable steps to ensure:

that the municipality has effective revenue collection systems consistent with Section 95 of the Municipal Systems Act 2000 and the municipality's credit control and debt collection policies;

that revenues due to the municipality are calculated on a monthly basis;

that accounts for municipal taxes and charges for municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;

that all moneys received are promptly deposited in accordance with the requirements of the present Act, into the municipality's primary and other bank accounts;

that the municipality has and maintains a management, accounting and information system which recognises revenues when they are due, accounts for debtors, and accounts for receipts of revenues;

that the municipality has and maintains a system of internal control in respect of debtors and revenues, as may be prescribed;

that the municipality charges interest on arrears, accept where the council has granted exemptions in accordance with its budget related policies and within a prescribed framework; and

that all revenues received by the municipality, including revenues received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

The accounting officer must immediately inform the national treasury of any payments due by an organ of state to the municipality in respect of municipal taxes or for municipal services, if such payments are regularly in arrears for periods of more than 30 days.

NOTE: SECTION 164: FORBIDDEN ACTIVITIES

Section 164(1)(c) lists as a forbidden activity the making by a municipality of loans to councillors or officials of a municipality, directors or officials of any municipal entity, and members of the public. It has been assumed for purposes of compiling the credit control and debt collection policy that allowing any party to pay off arrears of rates and municipal service charges is not tantamount to the making of a loan in terms of Section 164.)

IV: LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT NO. 6 OF 2004

SECTION 28: RECOVERY OF RATES AND SERVICES IN ARREARS FROM TENANTS AND OCCUPIERS

If the rates owed by a property owner are unpaid by due date, the municipality may recover such rates, either in whole or in part, from any tenant or occupier of the property concerned.

However, the tenant or occupier of the property must first be given written notice of the municipality's intentions, and the amount which the municipality may recover is limited

to the amount of rent and other moneys due and unpaid by the tenant or occupier to the property owner concerned.

The Municipal Manager must ensure that all avenues are utilised to collect the municipalities debt .There are certain circumstances that allow for valid termination of debt collection such as :

- The insolvency of the debtor whose estate has insufficient funds
- The balance being too small to recover for economic reasons considering the cost of recovery
- Indigent households who have no assets which can be sold for recovery of the debt to the municipality or indigent who do not have assets (e.g RDP Houses)
- Any debtors accounts whose cost to recover is more than the the assets of the debtor
- A deceased debtor who has no assets to recover the debt
- Where the council deems that a customer or groups of customer are unable to pay for service rendered

SECTION 29: RECOVERY OF RATES FROM AGENTS

If it is more convenient for the municipality to do so, it may recover the rates due on a property, either in whole or in part, from the agent of the property owner concerned.

However, the agent must first be given written notice of the municipality's intention, and the amount the municipality may recover is limited to the amount of any rent and other moneys received by the agent on behalf of such property owner, less any commission due to the agent.

COUNCIL APPROVAL AND EFFECTIVE DATE

Approval of Policy by Council: _____

Effective date: _____

Accounting Officer's Signature: _____